

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

William A. and Donna K. Fink,
Appellant,

v.

Warren County Board of Review,
Appellee.

ORDER

Docket No. 13-91-0229
Parcel No. 21-880-00-0031

On May 19, 2014, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. Attorney Tom Ashworth represented Appellants William A. and Donna K. Fink. Attorney Brett Ryan, of Watson & Ryan, P.L.C., Council Bluffs, represented the Warren County Board of Review. The Appeal Board, having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

William and Donna Fink are the owners of property located at 3743 S 23 Highway, Carlisle, Iowa. Fink's property is 17.92 acres. The property has the following improvements: a two-story, 1782 square-foot, frame home with attached garage built in 1977; two steel utility buildings built in 1990 and 2010; and a lean-to built in 2008. The January 1, 2013, assessment was changed from an agricultural classification to a residential classification and valued at \$257,200, allocated as \$85,000 in land value and \$172,200 in improvement value.

The Finks protested to the Board of Review claiming the property was misclassified under Iowa Code section 441.37(1)(a)(3). They asserted the correct classification is agricultural. The Board of Review denied the petition. They then appealed to this Board reasserting their claim.

William Fink has owned the subject property since the mid-1980s. From the time he purchased it until 2011, it was agriculturally classified. In 2011, the Assessor's Office changed the classification to residential. Upon Fink's protest, the property's agricultural classification was restored by the Board of Review. In 2013, the Assessor's Office again classified the property residential and the Board of Review denied Fink's protest for reclassification.

Fink testified that since he purchased the property it has been generally used in the same manner; both for his residence and for agricultural activities. In past years, there have been cattle and then sheep pastured on the property. When the former renter, who raised sheep, quit doing so, Fink then advertised the pasture for horse boarding.

Fink testified that approximately 16.3 acres of the subject property is used for agricultural purposes. He stated 4.3 acres of the subject property is currently used for growing hay. Mike Goodhue, a local farmer, rents this area, grows the hay, and harvests it. Roughly, another 12 acres of the subject site is devoted to the use of boarding and pasturing of four horses, and for the horses to be trained. Three of the horses are boarded year-round and a fourth horse is boarded over the winter. Fink mows the pasture, scoops manure as needed, and maintains the fencing. When necessary he feeds and water the horses if the owners are gone.

Fink testified he earns about \$360 per year for renting the hay ground. Fink also submitted evidence show the boarding rent paid by the horse owners. Kelly Ashworth pays \$90 per month (\$1080 per year) for year-round boarding of three horses; and Melinda Jones pays \$30 per month for boarding one horse over the winter. (Exhibits 5 and 6). It is not clear how many months Jones boards her horse. Based on the evidence and testimony, assuming Jones pays for five months of boarding through the winter months, the total income from the hay ground and boarding would be approximately \$1600 per year.

Ashworth owns and maintains the horse equipment such as tack, saddles, a 100-gallon water tank, and one round pen used for training. Jones also owns a round pen, but it is not set up. They provide their own hay/feed. Fink allows Ashworth and Jones to use the pole building for storing equipment. He also built a container for the water tank inside the lean-to so that it would not freeze. Fink stated the water comes from his well, and he provides electricity to the water tank.

Fink built the 12-foot-by-24-foot horse shelter using reclaimed materials from an older building that had been torn down. (Exhibit 14). He had the concrete slab of the older building cut up, moved, and it now provides a dry area for hay storage. Additionally, he has replaced fencing that was in poor shape; and he maintains the fences every summer.

There are pictures of the pasture area, which he also asserts shows some areas are wet. (Exhibits 21, 23, and 24). Fink explained portions of the pasture are typically wet in the spring, and because of this, in his opinion, it cannot be row cropped. Further when he mows the area, there are times he becomes stuck, and for this reason, he asserts it is only suitable as pasture ground. He has also brought in chunks of concrete from the old building torn down and other sources to make a path, with a culvert, for access to the “back pasture.” (Exhibit 22). He testified the “south pasture” has a 23-foot slope, and gets wet from time to time; therefore, in his opinion, it also cannot be row cropped. This is simply an area for horses to graze. (Exhibits 27 and 28).

Fink provided additional testimony about two old tractors he owns and uses to maintain the property, including mowing and snow removal. He stated he keeps the old tractors to keep his costs down. He uses the tractor(s) to scrape manure, level land, and to repair fences. They are stored in one of his pole buildings. Fink submitted exhibits that he asserts demonstrate he uses the pole buildings in farm maintenance. (Exhibits 11, 12, and 13). He explained one building, referred to as the “shop,” houses a variety of tools used for such things as rebuilding and repairing the tractor and other farm equipment. He also stores chemicals in the buildings, which he uses to keep weeds down.

The Board of Review submitted Exhibit C, which were Fink's 2008 to 2012 Schedule F statements. When questioned about these Schedule Fs, Fink agreed it demonstrated a loss three out of the five years and an overall loss over that period. In addition, he noted he lost money in 2013 because his tractor required significant repairs, which would bring his total loss of about \$7000. Ultimately, we do not find the 2013 losses relevant to this appeal, as they occurred after the assessment date.

Warren County Assessor Brian Arnold testified for the Board of Review. In Arnold's opinion, about 50% of the subject site is used for the residence, other improvements, a treed area, and a pond. Arnold does not believe boarding horses is an agricultural use because it is not resulting in a commodity. Rather, he thinks the boarding of the horses is recreational use. Additionally, in his opinion, the 2008 to 2012 Schedule Fs demonstrate the use of this property is not for the intent of profit. Further, only 4.3 acres of the total 17.97-acre subject site is used for growing hay, which he concludes is an incidental use. Ultimately, he considers the income earned from the boarding of horses and hay crop to be incidental and not reflective of good faith intent to profit from agricultural activity.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct.

§ 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value, with one exception being agricultural property which is valued based solely on its productivity and net earning capacity. Iowa Code §§ 441.21(1)(a) & (e).

The Finks assert their property is misclassified and that should be classified as agricultural realty. The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* IOWA ADMIN. CODE r. 701-71.1 et al. (2013). Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. r. 701-71.1(1). Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. r. 701-71.1(2). Property is to be classified “according to its present use and not according to any highest and best use.” r. 701-71.1(1). “Under administrative regulations adopted by the . . . Department . . . the determination of whether a particular property is ‘agricultural’ or [residential] is to be decided on the bases of its primary use.” *Svede v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). There can be only one classification per property. r. 701-71.1(1).

By administrative rule, agricultural property

shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit.

r. 701-71.1(3)

Conversely, residential property

shall include all lands and buildings which are primarily used or intended for human habitation, including those buildings located on agricultural land. Buildings used primarily or intended for human habitation shall include the dwelling as well as structures and improvements used primarily as a part of, or in conjunction with, the dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds for household goods.

r. 701-71.1(4). “Thus, under both 701-71.1(3) and (4), a dwelling may exist on both agricultural and residential real estate; the key to resolving the classification determination under this rules is to determine the property’s primary use,” which is based on its *present use* and not its highest and best use. *Polk County Bd. of Review v. Property Assessment Appeal Bd.*, No. 09-1542 (Iowa Court of Appeals, Aug. 11, 2010).

First, we examine whether the property is in good faith used primarily for agricultural purposes or used primarily for human habitation and in conjunction with the dwelling. Finks assert the property is primarily used for agricultural purposes because approximately 16.3 acres are being used for boarding horses and hay ground. The Board of Review contends the only potential agricultural activity occurring on the property is the hay ground. It contends not only that horses are not livestock, but also that boarding said horses is not an agricultural activity.

It is undisputed that there are between three to four horses boarded on the property. Numerous Iowa code sections define livestock to include horses and the horses here comply with the common understanding of the term livestock. §§ 166D.2, 169A.1, 172A.1, 172B.1, 189A.2; BLACK’S LAW DICTIONARY 953 (8th ed. 1999) (defining livestock as [d]omestic animals . . . that (1) are kept for profit or pleasure, (2) can normally be confined within boundaries without seriously impairing their utility, and (3) do not normally intrude on others’ land in such a way to harm the land or growing crops.”); *see also Polk County Bd. of Review v. Property Assessment Appeal Bd.*, No. 09-1542 (Iowa Court of Appeals, Aug. 11, 2010); *Dubuque County Bd. of Review v. Property Assessment Appeal Bd.*,

CVCV099355 (Dubuque County District Court, July 11, 2011). Thus, it is reasonable to conclude horses are livestock.

Further, rule Iowa Administrative Code Rule 701-71.1(3) states that land is being used for “agricultural purposes if its principal use is devoted to . . . the rearing, feeding, and management of livestock . . . for an intended profit.” The term “agricultural purpose” is not ambiguous. If the land’s principal use is for the rearing, feeding, and management of livestock for intended profit, it is being used for an agricultural purpose. *Id.* Furthermore, this Board has previously held, and the Iowa District Court has affirmed, that boarding horses is an agricultural activity.

The Board of Review in this case continually referred to the fact that no “commodity” was being produced in this case. However, rule 701-71.1(3) does not require production of a commodity, and we decline to read such a requirement into the rule when the overarching directive is to classify properties as *set forth in the rule*. r. 701-71.1(1). For the foregoing reasons, we find that Fink’s horse boarding is an agricultural activity within the meaning of the rule as the horses are being managed on (approximately) 12 acres of the subject property. Thus approximately 16.3 acres of the property are being used for an agricultural activity. The Finks are using the *land and nonresidential structures* primarily for the feeding and managing of horses, as well as for hay crop. IAC r. 701-71.1(3).

We further note that although “good faith” is not defined by the rule, the Iowa Courts have interpreted “good faith” to mean “honesty of intention” or “subjective honest belief.” *Haberer v. Woodbury County*, 560 N.W.2d 571, 575 (Iowa 1997); *Garvis v. Scholten*, 492 N.W.2d 402, 404 (Iowa 1992). We find continued use of pasturing of livestock has not changed over time of the Finks’ ownership, and the Finks are genuine in their intent to operate the property for agricultural purposes. Moreover, a long-term tenant uses a portion of the site, roughly four acres, for growing and harvesting hay. Again, this is not a new use, but has been on-going and lends to the conclusion that Finks are acting in good faith.

This brings us to the final issue, and sometimes a difficult one, which is whether there is intent to profit from the agricultural activity. The rule requires that the agricultural activity be undertaken in good faith with an intent to profit. r. 701-71.1(3). The evidence shows the Finks receive income from boarding the horses and renting portion of the site for hay ground. Rule 701-71.1(3) does not require *actual* profit, only an intent to profit.

The Department of Revenue has chosen not to define intended profit, nor does it require submission of a schedule F that demonstrates a net *taxable* income to qualify for an agricultural classification. The rule simply does not require profit to be demonstrated on a Schedule F form as taxable income, nor does it dictate what are or are not reasonable “expenses.” The Board of Review asserted Fink’s Schedule F’s demonstrate the property is not be used with an intent to profit, as the property has lost revenue three of the five years shown, 2008 through 2012. (Exhibit C).

In *Hatfield v. Clarke County Board of Review*, Law No. 009357 (Clarke County District Court, April 27, 2000), the court determined a small farmer could be conducting a good faith agricultural use despite showing an operational loss. It noted that “an operational loss” is something “which many farm tax returns show.” Hatfield had a net loss for three years prior to the court case. *Id.* Yet the property could be classified agricultural. *Id.* It was clear the court’s primary focus was not on the fact that the Schedule F showed a taxable loss, but it considered all facts taken together.

Moreover, the Schedule F is an income tax filing and, generally, the purpose of the form is to deduct as many expenses as legally possible and permissible to lower taxable income. A taxable loss does not equate to a lack of intent to profit nor does it mean that an individual realized no real profit. Some of the deductions on a Schedule F would have been realized by Finks whether or not they were engaged in boarding the horses on the property as general maintenance and thus should not be simply counted against them.

Finally, the rule requires intent to profit, but does not say that the profit must be from a commodity, as the Board of Review appears to assert, rather the intended profit must come from an agricultural activity – including rearing, feeding, and managing livestock.

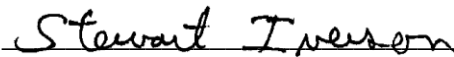
Following Iowa law and administrative rules governing the classification of real estate, we find Finks' property is properly classified agricultural realty.

THE APPEAL BOARD ORDERS the January 1, 2013, assessment of the Finks property located at 3743 S 23 Highway, Carlisle, Iowa, is classified agricultural realty. The agricultural land value shall be \$19,200, the dwelling value shall be \$149,200, and the improvement value shall be \$6700, which were the values established in the 2012 agricultural assessment. The total assessment shall be \$175,100. The Warren County Auditor shall *immediately upon receipt of this order* correct all tax records, assessment books, and other recordings pertaining to the assessment referenced herein.

Dated this 13th day of June 2014.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

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